

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF TEXAS  
3 HOUSTON DIVISION

4 KEITH COLE, et al., )  
5 Plaintiffs, ) NO. H-14-CV-1698  
6 v. ) August 7, 2019  
7 BRYAN COLLIER, et al., )  
8 Defendants. )

9  
10 TELECONFERENCE  
11 BEFORE THE HONORABLE KEITH P. ELLISON  
12  
13

14 For the Plaintiffs: Jeffrey S. Edwards  
15 David James  
16 Scott Medlock  
17 Mike Singley  
The Edwards Law Firm  
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18 For the Defendants: Leah O'Leary  
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21 Court Reporter: Bruce Slavin, RPR, CMR  
22  
23  
24

16:08 25 Proceedings reported by mechanical stenography and produced  
by computer-aided transcription.

1 THE COURT: Good afternoon and welcome. This is  
2 Keith Ellison. We're on the record. Let's take appearances  
3 of counsel, please.

4 MR. EDWARDS: This is, for the Plaintiffs class,  
16:09 5 Jeff Edwards, Scott Medlock, David James and Mike Singley,  
6 Your Honor.

7 THE COURT: Okay. For Defendants.

8 MS. O'LEARY: This is Leah O'Leary from the  
9 Attorney General's Office for TDCJ.

16:09 10 THE COURT: Okay. I thought we had worked all  
11 these temperature issues out.

12 Tell me what the problem is, Mr. Edwards.

13 MR. EDWARDS: As we tried to be very brief in our  
14 letter, essentially, we have been getting complaints from  
16:09 15 inmates at the Leblanc Unit, which is one of the units that  
16 TDCJ has transferred members of the class to about the  
17 conditions being very hot. These complaints -- we have been  
18 getting letters and actual complaints since the 12th of  
19 July. They have continued this week.

16:09 20 As a consequence, we visited the prison,  
21 confirmed the complaints and tried to work out an inspection  
22 with TDCJ. We were supposed to go tomorrow. We were told  
23 that that would not happen, that it would not happen until  
24 Monday. And, given that there is a heat advisory in  
16:10 25 Beaumont, that is something that we simply could not abide

1 by and tried to work out an accommodation where they would  
2 at least notify us of the temperatures in the housing areas  
3 where these inmates were living during the hottest periods  
4 of the time of day, roughly 12:00 o'clock until 4 o'clock.

16:10 5 They refused and left us with no choice but to notify the  
6 Court.

7 This is not something that we enjoy doing, but  
8 given the fact that we have monitoring responsibilities and  
9 there is a heat advisory, I'm, frankly, at a loss as to why  
16:10 10 TDCJ can't allow us to go into the prison and verify the  
11 temperatures or the heat indexes tomorrow. And if they  
12 absolutely cannot do that -- which I don't know that that's  
13 necessarily true. Even so, there needs to be some  
14 appreciation that we have received complaints and, whether  
16:11 15 they are accurate or not, there is a very real risk given  
16 the heat advisory in Beaumont and the complaints that we  
17 have given.

18 Finally, in an effort to, again, try to work  
19 things out, we have asked for documentation to show that  
16:11 20 fixes have happened; and, unfortunately, it is TDCJ's  
21 position that they simply are not obligated to provide us  
22 with any documents, whether we request them or not, and that  
23 it goes beyond our settlement agreement. This is core to  
24 the issue. We disagree with that, but we have been trying  
16:11 25 to work things out.

1                   Unfortunately, in this instance we have a  
2                   concern that, you know, if we wait something really terrible  
3                   could happen. It's certainly not our hope that that  
4                   happens, desire that that happens, but I would feel terrible  
16:12 5                   if we had simply not come to the Court and something like  
6                   that did happen.

7                   That's basically the run of it, Your Honor.

8                   THE COURT: Okay. Ms. O'Leary.

9                   MS. O'LEARY: Yes, Your Honor.

16:12 10                   We had scheduled a walk-through for tomorrow  
11                   at the unit. Unfortunately, the Warden has had a family  
12                   emergency and we had to reschedule that for Monday.

13                   Because the walk-through is going to be  
14                   walking into maintenance areas and we have an HVAC  
16:12 15                   professional that was going to attend with us and bring some  
16                   equipment that measures not only temperature and humidity,  
17                   it's not merely a unit visit and, so, it's not --  
18                   Plaintiffs' counsel can go to visit a unit at any time by  
19                   submitting attorney-client paperwork, but because this  
16:12 20                   walk-through is much more involved than a simple unit visit,  
21                   we have to have the Warden. We need to move it until Monday  
22                   to get everything together.

23                   As far as temperature logs that the Plaintiffs  
24                   have requested, our position is that the settlement  
16:13 25                   agreement does not require TDCJ to keep or maintain

1 temperature logs at a unit that has permanent  
2 air-conditioning.

3 THE COURT: Okay. Well, my concern is -- I  
4 appreciate what you said, but my concern really is, if the  
16:13 5 logs are not going to be produced, tell me what you  
6 understand the temperature to be. That's the point you  
7 haven't addressed.

8 Is there some defect in the air-conditioning  
9 now?

10 MS. O'LEARY: To the extent that there is  
11 maintenance or issues with the air-conditioning, there's no  
12 areas that don't have air-conditioning right now.

13 Just now, before we got on the phone with the  
14 Court, TDCJ suggested that they could move the members of  
16:13 15 the class to a different housing area within the Leblanc  
16 Unit that does seem to be cooler.

17 THE COURT: Well, tell me what's the problem. Why  
18 is one part of it hot? What's the problem? Is the  
19 air-conditioning --

16:14 20 MS. O'LEARY: Well, it's all air-conditioned, Your  
21 Honor. However, one area does seem -- they're getting more  
22 complaints from offenders. As the Plaintiffs' class counsel  
23 are getting complaints, TDCJ always receives the same type  
24 of complaint.

16:14 25 And, so, in one area they have not figured out

1 what's wrong with the air-conditioning. It seems to be  
2 running, but it does seem to not be cooling as the others.  
3 So, as an immediate fix, TDCJ has suggested that they move  
4 the class members to the other housing areas that there  
16:14 5 doesn't seem to be any complaints about the  
6 air-conditioning.

7 And I apologize for not having that  
8 information before we started this call. I certainly did  
9 not intend to delay that information.

16:14 10 THE COURT: Ms. O'Leary, I don't think you're at  
11 fault. That's not my intention at all, to assume that.

12 In terms of the inspection, I really don't  
13 understand why the Warden needs to be there. Surely he's  
14 got trusted staff who could cover for him. No?

16:15 15 MS. O'LEARY: Possibly, Your Honor. Because he was  
16 not able to be there and because it's somewhat of an  
17 involved walk-through at the unit where we are taking class  
18 counsel into areas other than just the housing areas --  
19 Class counsel has requested to see the area-conditioning  
16:15 20 systems and things like that. I have just been told that  
21 because it's a much more involved walk-through that the  
22 Warden would need to be present, which is why it was  
23 postponed for four days.

24 TDCJ is certainly not refusing them access.  
16:15 25 TDCJ is trying to cooperate to get them the information that

1 they need. Temperature logs, however, are not something  
2 that are done regularly. There is not thermostats that  
3 automatically grab and record temperatures. My  
4 understanding is that maintenance personnel are required to  
16:16 5 go view the temperatures. And, so, that's the reason that  
6 the easy fix is not just to do temp logs for the next four  
7 days.

8 THE COURT: Mr. Edwards.

9 MR. EDWARDS: Well, Your Honor, this is even more  
16:16 10 concerning than when we wrote the e-mail. Now what I am  
11 learning is that TDCJ has gotten numerous complaints and  
12 that TDCJ affirmatively knows that portions of the Leblanc  
13 Unit are, actually, cool and some portions are not, making  
14 the need for temperature data far more important than,  
16:16 15 frankly, before the call.

16 One of the problems here, we're back to -- I  
17 mean, I can't believe I am saying this, but it appears that  
18 we're back to Square One with --

19 And let me again echo what you've said. I  
16:17 20 respect, Ms. O'Leary, and she is, unfortunately, telling you  
21 things that are being told to her and we're back to this  
22 situation where TDCJ is expecting and asking Plaintiffs'  
23 counsel to simply believe them and take their word for  
24 things when, given the history -- and I do not want to  
16:17 25 relitigate this case -- but given the history, that's

1 simply something that is untenable on objective grounds at  
2 this point.

3 Here, again, the concern that we have is that  
4 inmates who are in the class, who are entitled to  
16:17 5 air-conditioning where temperatures, heat indexes below  
6 [verbatim] 88 degrees, are in danger. Okay?

7 TDCJ cannot even tell you what the temperature  
8 is in the housing areas for purposes of this hearing. We  
9 have been asking for that information for a significant  
16:17 10 period of time prior to this call.

11 I understand TDCJ, through Ms. O'Leary's  
12 position, that they're not obligated to give us anything  
13 and, so, they're taking, out of some misguided fear, that  
14 providing us some information will create some precedent  
16:18 15 that they then have to continue to provide us information --  
16 That is their worry or what's been relayed to us or what I  
17 am trying to decipher is their concern. But the reality is  
18 we have a heat advisory in Beaumont. We have a very real  
19 danger. We have an acknowledged risk by TDCJ that portions  
16:18 20 of the prison are hotter than others.

21 The proposed solution is let's move the class  
22 members to the cool, safe area of the prison. By all means  
23 they should do that. But we should go forward with the  
24 inspection so that we can see the housing areas that they  
16:18 25 were in to see if TDCJ is in compliance with the settlement

1 agreement.

2 Again, all we're talking about with regards to  
3 these inspections are verification of heat indexes, which  
4 they should be able to tell this court or us, frankly, on a  
16:19 5 moment's notice, and we need to verify that the temperatures  
6 that the thermometers are saying are consistent with what's  
7 being reported. This is not a lengthy inspection, but from  
8 our standpoint it needs to happen. I think even TDCJ  
9 acknowledges it happen.

16:19 10 Again, with regards to why it can't go forward  
11 tomorrow, Plaintiffs' counsel does not accept TDCJ's  
12 explanation that the Warden needs to be there. There is no  
13 reason that an assistant warden or another warden from  
14 another prison or a more high-ranking official than a warden  
16:19 15 couldn't be in the housing area. I don't think there is a  
16 safety concern and I don't think there is a legitimate  
17 concern.

18 As to the engineers, the air-conditioning  
19 engineers that TDCJ was going to bring, TDCJ suggested this  
16:20 20 date. TDCJ was the one who said Thursday at the Leblanc  
21 Unit or at least agreed to that date when we said that's as  
22 long we can wait.

23 Again, I hope nothing were to happen over the  
24 next four days, but from Plaintiffs' perspective, given what  
16:20 25 TDCJ's people have represented to Ms. O'Leary, I very much

1 think that this needs to go forward tomorrow and that there  
2 be some discussion as to, you know, what perhaps Plaintiffs'  
3 counsel is entitled to in terms of trying to monitor these  
4 facilities.

16:20 5 I don't want to have to come -- I mean, I  
6 certainly hope we don't have to come back to the Court when  
7 all we're trying to do is verify whether or not complaints  
8 are legitimate. We're five hours away, roughly, from the  
9 Leblanc Unit. It's not something that we can easily just go  
16:21 10 and check.

11 When we did go there on the 19th the  
12 complaints seemed legitimate to us. We interviewed a number  
13 of inmates. In response to that, here's what was refused to  
14 us:

16:21 15 Under no circumstances would TDCJ provide any  
16 documents substantiating work done on the air-conditioning.  
17 Under no circumstances would they alert us to when  
18 air-conditioning problems are done or when they're notified  
19 of them. Under no circumstances would they take  
16:21 20 temperatures, document them and provide them to either us or  
21 the Court.

22 That's what we were told. And, so, you know,  
23 given the situation --

24 MS. O'LEARY: I am going to have to interrupt --

16:21 25 THE COURT: Okay. All right. I think I understand

1 your point, Mr. Edwards.

2 Ms. O'Leary, do you want to say something?

3 MS. O'LEARY: We have provided a spreadsheet of all  
4 of the maintenance and work on air-conditioning that was  
16:21 5 performed at the Leblanc Unit over the past month. That  
6 spreadsheet indicated what the problem was, when it was  
7 reported and the time and date that it was resolved. And,  
8 so, that was provided. So, the statement that under no  
9 circumstances would we provide it -- that's just not true.

16:22 10 Secondly, to the extent that the Plaintiff or  
11 the Court perceived there to be an emergency situation  
12 because of the heat advisory, that is certainly allayed by  
13 moving the offenders to a different housing area.

14 And, so, absent the emergency, there is no  
16:22 15 reason why the walk-through can't be rescheduled for Monday  
16 when TDCJ is able to get everybody that it feels  
17 necessary --

18 THE COURT: Ms. O'Leary, is the only reason that  
19 tomorrow is not good the Warden's unavailability?

16:22 20 MS. O'LEARY: No, Your Honor. All of the high-  
21 level executive officials at TDCJ are out of the state  
22 attending the ACA conference, which is the American  
23 Correctional Association conference, and by Monday they'll  
24 be back. And, so, there was some concern that during the  
16:23 25 walk-through, if we need to get permission to enter a

1 certain area or if there's questions, then those high-level  
2 officials would be available during the walk-through.

3 THE COURT: Well, why did --

4 MS. O'LEARY: The secondary reason that --

16:23 5 THE COURT: Well, Ms. O'Leary, if that is true, why  
6 did you originally agree to Thursday as the date?

7 MS. O'LEARY: I'm not sure, Your Honor. That's --  
8 I'm not sure. I think, if the only reason was the ACA  
9 conflict, then it wasn't an issue and it was scheduled for  
16:23 10 Thursday. But now the combination of the Warden being  
11 unavailable and the ACA, that's the reason for the request  
12 for the reschedule.

13 THE COURT: Well, I'm sorry, but I am going to have  
14 to deny your request.

16:23 15 The inspection will proceed as scheduled  
16 tomorrow. And I'll be here in case there's anything I need  
17 to rule on during the course of the day.

18 Thank you all very much. Thank you.

19 MS. O'LEARY: Yes, Your Honor.

16:24 20 MR. EDWARDS: Thank you, Your Honor.

21 COURT REPORTER'S CERTIFICATE

22 I, BRUCE SLAVIN, certify that pursuant to  
23 28 USC § 753 the foregoing is a correct transcript from the  
24 record of proceedings in the above entitled matter, to the  
25 best of my ability.

s/Bruce Slavin  
BRUCE SLAVIN, RPR, CMR